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ABSTRACT

The issue of whether or not the basic principle guiding the placement of Australian children in need of care is applied in practice is addressed in this expanded seminar paper. It is pointed out that the principle stating that the child's welfare should be of paramount concern has been incorporated into Australian legislation in the Adoption Act and the Family Law Act. It does not appear, however, in the proposed Child and Community Welfare Act (circa 1981). The history of child welfare provision, Australian law, the psychological parent and bonding, and the biological parent are the topics initially taken up. Subsequently, the topics of the impact on the child of separation, early adoption, late adoption, and long- and short-term foster care are discussed. It is concluded that in Australian society, the child's ties with biological parents are overvalued. The proposed Child Welfare Act makes termination of parental rights increasingly difficult even though research findings indicate that adoption of young children is preferable to long-term foster care. To the extent that the law protects the rights of biological parents over the best interests of the child, the legal principle that the child's welfare should be of paramount concern is completely abandoned in practice. (Author/RH)



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# Selected Papers

## Number 14

## Unit for Child Studies

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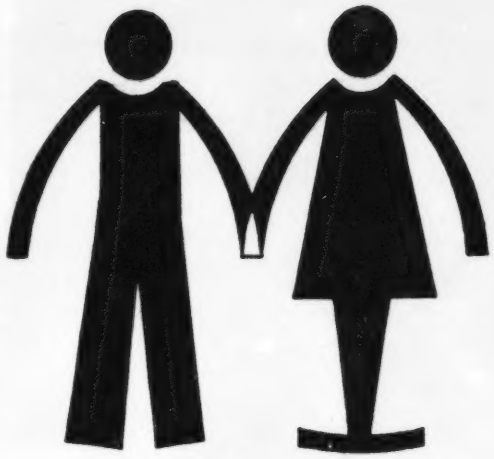

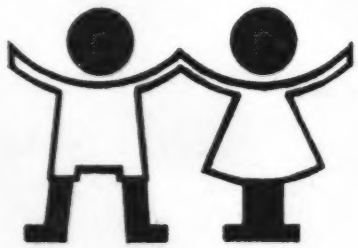

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SUBSTITUTE CARE - DOES IT SERVE THE NEEDS OF THE CHILDREN

DR ANNE BANNING

# SUBSTITUTE CARE
# DOES IT SERVE THE NEEDS OF THE CHILDREN?

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Where a biological parent or parents are unable or unwilling to rear a child, the state intervenes and arranges alternate child placement either by adoption, fostering or residential care. The majority of these children are of "illegitimate" births. Paradoxically in the context of our welfare state more children are being cared for by single parents, or parents with severe psychiatric illness, often very inadequately. The number of children available for adoption or foster care is declining and there is a steady decline in the number of children in residential care. This is accounted for by more single parents keeping their children and by the decline in the birth rate.

The fundamental principle in placing children in need of care is that the child's welfare should be of paramount concern. This principle has been incorporated into Australian legislature in the Adoption Act and the Family Law Act. It does not appear in the proposed Child and Community Welfare Act.

This paper will try to address whether this principle is applied in practice.

## *The History of Child Welfare*

The concern for the welfare of children is a recent event in the history of childhood. Demause (1974) states "the history of childhood is a nightmare from which we have only recently begun to awaken. The further back in history one goes, the lower the level of child care, and the more likely children are to be killed, abandoned, beaten, terrorized and sexually abused."

In Roman law the father had absolute control over his children. This meant that the child was a chattel who could be sold into slavery or condemned to death without fear of legal retribution. The absolute rights of the father continued in English law until the fourteenth century, by which time the status of the child had gradually evolved into that of a servant. By the eighteenth century the father could be denied custody if it could be proven that the child was in actual physical or moral danger. The mother had no right of custody; these views were based on property considerations, with the father being the only person able to provide financial support.

Gradually during the nineteenth century society became more concerned with the welfare of the child, developing the principle that obligations accompany custody rights. This led to the doctrine of parens patriae which held that the State has an obligation to protect and provide for children who cannot protect themselves, or to remove children from parental custody if that is necessary for their protection.

*"The Best Interests of the Child"*

Australian law states that in all placement decisions the welfare of the child is the "paramount consideration". The traditional role of such interventions is to serve "the best interests of the child." Goldstein, Freud and Solnit (1973) argue that the child's best interests have already been lost, as he/she has lost the continuing relationship with his/her biological parents. They proposed the term "least detrimental alternative" to highlight the fact that the child has already been a victim of his/her environment, that he/she is at risk, and that speed is necessary to ensure a new relationship for healthy development and to prevent further emotional damage. The guidelines for making decisions involve the concepts of attachment, the need of children to have continuous relationships, the effects of separation and loss and the length of time for decision-making based on the child's sense of time. These concepts are discussed below.

*The Psychological Parent and Bonding*

The concept of the psychological parent is increasingly being recognised as an important principle by courts in making custody decisions. However the term is not used in any of the Acts and frequently this principle is ignored in practice. The Joint Select Committee (1980) in its review of the Family Law Act lists eight matters to be taken into account in deciding a custody dispute. These include the conduct of the parents, the wishes of the parents, the wishes of the child, the education and up-bringing of the child, but nowhere is the term psychological parent used.

A psychological parent is defined by Goldstein et al (1973) as "one who on a continuing day-to-day basis through interaction, companionship, interplay and mutuality, fulfils the child's psychological needs for a parent as well as the child's physical needs." The relationship between the psychological parent and the child is a reciprocal one. The child wanted in the context of a secure continuing relationship is able not only to receive and return love, but also to express anger and to learn to control his/her aggression. These concepts are based on psychoanalytic theory and attachment theory.

Infants of many species, as well as the human infant, are innately programmed to attach to one or a small number of significant adults. The human infant has a number of behaviours - smiling, crying, sucking, clinging and later following - all designed to attach the infant to the mother, and the mother to become bonded to him/her. The mother becomes preoccupied with her baby, and responds to his/her cries which make her uncomfortable until she attends to him/her. She also responds to her baby's smile, her baby's desire to cling and later his/her efforts to follow her and keep track of her while he/she plays. This relationship develops with any suitable caretaker and need not be the biological mother and need not be a female. The infant in turn slowly but surely becomes attached to such a person who becomes the centre of his universe. The child's security and trust, his/her self-esteem and feeling of well-being depend on the continuing care of such a person.

*The Biological Parent*

The biological parent is usually also the psychological parent. However an absent biological parent is just as likely to be a stranger to the child as are other people. Unlike adults the child has no concept of a blood-tie

until late in his/her development. The child, innately endowed with a powerful mechanism to attach, forms meaningful relationships only with those persons who care for him/her on a day-to-day basis.

*The Effects of Separation*

There is general agreement on the short term effects of separation and less agreement on the long term consequences.

The short term effects of separation are dependent on the age of the child and the length of the separation. Children have a different time sense from adults, based on the urgency of their instinctual and emotional needs and on their capacity to remember the significant caretaker. They are unable to postpone gratification or tolerate frustration, and react intensely to separation. The older the child the longer he/she is able to tolerate the separation, and to postpone gratification. Small children view the world egocentrically and are inclined to explain events as happening solely to them. Thus the death of a parent or divorce may be viewed by the child as intentional abandonment. Alternatively a child may blame himself/herself for the parent's divorce.

In the first few months of life an infant is not able to differentiate his/her mother (or other caretaker) as a particular and preferred person. Thus separations occurring during the first six months of life have a global effect with the infant becoming withdrawn and inhibited. After six months the baby has become attached to his/her mother and knows her as the source of all comfort and gratification. Separation from such a person involves the child going through phases of mourning described by Bowlby - protest, despair and detachment. This is analagous to an adult losing a spouse, although in a much abbreviated form. Thus the child initially protests, with much anger and anxiety, the biological purpose being to regain the lost mother. If this is unsuccessful in regaining the mother, the baby goes through the phase of despair where he/she looks depressed and may reject other adults. Finally the child seemingly recovers and relates to other adults - the phase of detachment. This apparent recovery can only be tested by the return of the mother. With mother's return, for example after hospitalisation, the child typically becomes more clinging and ambivalent in his/her relationship.

Many young children admitted to hospital or to a residential nursery show an acute distress reaction as described, followed by disturbed regressed behaviour on reunion, lasting many months. However the Robertsons (1967 ; 1968) have shown that this harrowing picture is modified by the provision of high quality loving care during the separation, although the child is still disturbed by the stress of the separation.

I shall now deal with the long term effects of bond disruptions. It is not possible to make accurate predictions as the child's future environment is unpredictable. The outcome studies on children involved in divorce by Wallerstein & Kelly (1975) show that the child has a good or bad outcome depending on his/her future environment, usually the custodial parent's ability to recover. Children who had the worst outcome were those where the custodial parent (usually the mother) remained preoccupied with her hurt and humiliation and was unable, because of her own depression, to nurture the child. The importance of the environment for good or ill was also clearly demonstrated in the adoption studies described below.

Despite this unpredictability there are some general principles involved. The ultimate development of a person's sense of security, self-esteem and capacity to trust and engage in meaningful relationships depends on the nature of his/her attachment to the psychological parents, on the continuity of that relationship, and on the vicissitudes of that relationship. The breaking of such a bond involves a loss of self-esteem for the child and a loss of trust in future relationships. Certainly the child becomes more vulnerable to loss in the future. Repeated disruption of bonds affects the child's personality and cognitive development. He/she may become antisocial, delinquent and unable to make stable relationships.

The studies on fostering (below) clearly show the deleterious effects of multiple placements.

*Adoption*

The adopted child is defined by the fact that one or two adults who are not his/her biological parents have legally been given complete parental responsibility and rights. Legal adoption cancels out the biological parents' rights. Debate exists whether it is important to maintain contact with the biological parent(s) because in adolescence the child will want to know his/her origins. Alternatives to adoption have been proposed with the view of returning children to biological parents whenever possible. This view is espoused with the older child who has knowledge of his biological parent(s).

It is my belief that children have the right to know their biological parents, but this does not mean a transfer of custody. In my experience the knowledge of a biological parent does not mean that the child wishes to move and transfer his/her allegiances if the relationship with the caretakers has been a good one. Children reared by their grandparents have known their biological parent (usually the mother) all their lives. However they become intensely distressed if there is any threat to their removal and transfer of custody. Many heartrendering custody battles are fought between grandparents who have reared a child from infancy, and the mother who has recently married and become "respectable", often years later. The grandparents are usually advised by the Department of Youth and Community Services to return the child to the mother and should the matter reach the Courts, it is frequently decided in favour of the mother.

I shall now turn to the research literature to examine how successful is the practise of adoption as a form of child rearing. Many research outcome studies have been done on adopted children. I will quote from one *Growing Up Adopted* , (1972) a long term study of adopted children and their families carried out by the National Children's Bureau in the United Kingdom. This is an ongoing study of a cohort of 17,000 children born in one week in 1958, examined in 1965, and again in 1969 with the objective of carrying out the study into adulthood. 180 adopted children are compared at age seven with two control groups - legitimate children and illegitimately born children who remained with their biological mothers. This study is unique in that information was collected on virtually every baby born in the U.K. during one week in 1958. Twenty-three percent of the illegitimate babies were adopted.

The outstanding fact to emerge from this careful study is the power of the environment to affect children's development for good or ill. The adoptive parents' personalities, attitudes, feelings and expectations influenced the outcome for these children. Factors such as age, health, social class and family composition were rather unimportant, challenging the practices and

theories of many adoption agencies about the importance of matching for similarities in physical appearance, temperament and intelligence. This study examined the physical development, cognitive ability and attainments, behaviour and adjustment of the children. The adopted children and the illegitimate children were found to be significantly vulnerable at birth with respect to poorer antenatal care, lower birth weight and increased illness of the baby following birth. At age seven no difference was found between the adopted and all other children in the cohort in the prevalence of physical defects.

In all aspects of cognitive ability and achievement the adopted children did either as well as, or even better than all the other children. By contrast the majority of illegitimately born children who remained with their natural mothers reached lower levels of ability and achievement as rated by teachers and objective testing. This was a surprising result in view of the adopted children's poor start in life. The favourable circumstances of their new environment more than compensated for the early handicaps.

With respect to behaviour and adjustment this varied with social class and sex. Adopted children of both sexes brought up in working class homes showed no difference in social adjustment when compared with other children in the cohort. However adopted boys in middle class homes showed a higher incident of maladjusted behaviour than those from such homes in the cohort as a whole. On the other hand adopted girls from middle class homes were as well adjusted as all cohort girls from middle class homes. Children placed relatively late were also more vulnerable and more boys were placed later. This finding has to be placed in perspective. Overall there was no difference in adjustment between the adopted children and all the other children in the cohort. By contrast the illegitimate children who remained with their mothers showed a high degree of 'maladjustment'.

The researchers conclude that "Adoption is the best method of substitute care for most children whose parents are unable, unwilling or unfit to provide a suitable and permanent home for them". By contrast there is a much higher failure rate for children brought up in foster care.

Other research studies indicate a good outcome for adoptees. However it is acknowledged that there is an over-representation of adopted children referred for psychiatric assessment and management. Although estimates vary quite markedly, the overall use of child psychiatric services is two or three times the expected rate. Adoption has its own inherent stresses. Adoptive parents may have difficulties in accepting their infertility or in accepting the child's illegitimacy, and may pass on such difficulties to their children. However the increased proportion of referrals may also be accounted for by the fact that most adoptees are reared with middle class parents and such parents are more likely to seek psychiatric help. Additionally, adopted parents may find it easier to seek help on the grounds of blaming the child's heredity rather than themselves.

Adopted children have greater identity problems in adolescence and usually want to know their origins. In recent years there has been pressure from adult adoptees to have access to their birth records. In Scotland the right to find out about one's family of origin was provided by their first Adoption Act in 1929. Triseliotis (1978) studies adoptee adults who sought out their birth records under this Act.

This study outlined two different groups - one group searched for information only and the other group sought re-union. A clear pattern emerged: the more negative the adoptee's perception of his/her adoptive family relationships the more likely that he/she would be seeking not only information about

but also reunion with the birth parents. However only a small number of adoptees sought out their records. This study suggested that all adopted people have a deep psychological need to know about their origins, but not necessarily to search. The absence of information about the family of origin intensified the need to search. This study also confirmed the findings of previous studies that the quality of family relationships was of primary importance. Telling a child his/her genealogical origins was also considered important, but definitely took second place.

*Late Adoptions*

A very interesting study carried out by Kadushin (1970) examines the outcome for children adopted late (average age seven). The sample comprised ninety-one families who adopted healthy children of normal intelligence, through one agency. The children became available for adoption, in all instances, as a result of court action, terminating parental rights because of neglect and/or abuse. On average the children had been removed from their homes at the age of three and a half, and after 2-3 changes of foster home, were adopted at the age of seven. They were an average age of fourteen years at follow up. The children were all placed in homes of considerably higher socio-economic level than their original homes.

The group as a whole showed a greater degree of psychic health and stability than might have been anticipated from their very disturbed early background. The child's capacity to develop interpersonal relationships was rated as "good" or "fair" in 79 percent of cases. The older the child at the time of placement the greater the likelihood of a less favourable outcome. The outcome was also less favourable where the number of placements had been high. It was interesting to note that the majority of replacements (81%) were for administrative or situational reasons rather than the unacceptable behaviour of the child. In only two of the ninety-one families did the adoption end in the child's subsequent removal from the home.

This study clearly demonstrates the success of adoption compared with fostering (see below). However this study, as well as several others show that children adopted late had a poorer outcome than those adopted early.

*Foster Care*

Children are placed in Foster Care when their biological parent(s) are unable to care for them for brief or extended periods, and they are not available for adoption. Fostering can be designated as emergency (usually for brief periods because of a crisis, such as physical illness of the parent(s)); short-term (where it is anticipated that the parent)s) will be able to care for the child within a year;) and long-term (where the length of time in care is indeterminate). The duration of the foster situation is frequently unknown and short-term care can be prolonged into long-term care.

Foster parents have virtually no legal rights. Agencies fostering children are emphatic that the child is placed on a temporary basis only and that the agency has the right to remove the child from the foster home at any time. The foster parents have to agree to these conditions and attachment is actively discouraged. Foster parents of children placed voluntarily have the legal right to contest custody. This right does not exist for foster parents of State Wards in N.S.W., although this position has recently been challenged in the Supreme Court by the much publicised McGuire v/s Tull custody case.

The proposed Child Welfare Act does give foster parents of State Wards the right of appeal against decisions made by Department of Youth and Community Services.

The conditions of long-term fostering are inimical to the needs of children for security, continuity and emotional constancy. As described a child can only grow and mature if he/she has at least one psychological parent who wants him/her and cares for him/her. The needs of children placed on a short-term basis are entirely different and in that situation it is important either to have continuing contact with the biological parent, or if that is not possible, to keep the image of that parent alive. However with long-term foster care, frequently for years, the child is often left in an emotional vacuum.

Despite the conditions laid down foster parents frequently do develop emotional bonds with their children and become psychological parents. Fostering a helpless baby does evoke strong feelings of care, concern and commitment, and usually leads to bonding, unless the foster parents are cold detached people or remiss in their function as foster parents. On the other hand older children who are less helpless and often more troublesome do not evoke such a strong appeal. For these children the security of commitment can be vital. The lack of emotional bonds means that foster parents can easily terminate the arrangement if the child proves difficult or if the placement becomes inconvenient particularly with the older child. Whatever the reason for the breakdown, the child usually feels rejected. In Kadushin's study (above) the majority of changes were for administrative reasons.

Research studies on fostering highlight the difficulties. The rate of success of foster placements in various countries is only about 50 percent. Success has been defined by one study carried out in Kent, England, as a placement lasting without a break for five years. In this study by Parker (1966) the success rate was 52 percent and 70 percent of the failures occurred within the first two years. Placements of younger children, particularly those under three years, were more successful than those of older children.

Unfortunately multiple placements are not uncommon and with each placement the chances of success progressively diminish. Ambinder (1965) in a study of foster care for 410 boys in Detroit found that the average thirteen year old foster child had had four to five placements. Again the children who were placed early had a much better chance of finding a stable foster home than older children.

The studies show a clear association between the breakdown of fostering and emotional maladjustment (Trasler, 1955; Eisenberg, 1962) and poor cognitive development (Chambers, 1961; Williams, 1961). Repeated placements may be the cause or the result of emotional disturbance and the two factors are obviously closely linked. A good deal of case material, in particular Trasler (1958), showed that emotional disturbance resulted from previous rejections (by foster parents or biological parents) and each rejection intensified the difficulties. Further it has been shown that the average placement is not likely to succedd with the emotionally damaged child. As described damage is liable to occur with each successive placement.

Retrospective studies on young adults who had been in foster care indicate the long term deleterious effects. Meier (1965) in a follow up study of former foster children showed that they had a higher incidence of marital breakdown and a higher proportion of illegitimacy than among the general population. Multiple placements had long term deleterious effects, particularly in the spheres of marital relationships and employment. Despite these negative findings Meier found that compared to their parents the group was very successful in being fairly stable and respectable. This was a particularly interesting finding in view of the fact that they had had an average of five to six placements.

McCord and McCord (1960) on the other hand, found that a significantly higher proportion of those fostered in early adolescence (15 out of 19) had had criminal records in adulthood compared with the control group of similarly disturbed adolescents who were not fostered (8 out of 19). Later foster placements are obviously unsuccessful in preventing deviance. Meier (1965) also noted that a number of her subjects had been in prison in late adolescence but later did well. It seems important to continue studies into adulthood to adequately assess outcome.

*CONCLUSION*

It has been shown that adoption is the best method of substitute care for most children placed before adolescence. Research studies clearly demonstrate a much lower failure rate than residential or foster care. Additionally outcome studies demonstrate that adopted children do better in terms of emotional adjustment, and cognitive ability and achievement than do foster children or illegitimate children reared by their biological parents, usually single mothers.

Our society, and this is reflected in legal practice, overvalues the child's ties with his biological parents. Children who are physically abused are frequently allowed to return home in the hope that emotional support for the family will avoid a recurrence, when we know that abuse is liable to happen again. Likewise children who are emotionally abused and neglected are allowed to remain in very unsatisfactory homes. The proposed Child Welfare Act makes termination of parental rights even more difficult. It is difficult and usually impossible to rehabilitate a psychiatrically damaged adult and far easier to find a caring home. The overwhelming evidence demonstrates that the child's emotional health is dependent on his/her environment for good or ill and further it has been shown that children can recover if placed in a good, caring stable home.

Health care workers are reluctant to recommend removal of a child from his/her parents because of the poor results of foster care. These children are generally unavailable for adoption because the law protects the rights of the biological parents. In this respect the legal principle that the child's welfare should be of paramount concern is completely abandoned in practice. Many children languish in long term foster care, with all the insecurity that this entails, simply because the parents refuse to relinquish the child for adoption. Further foster parents frequently do form bonds with their children and wish to remain a family, whereas the agency is working towards restoration to the biological parents.

There are now more couples wishing to adopt a baby than babies available for adoption. Consequently more childless couples are prepared to take on the older, harder-to-place child and give him the security of a permanent

home. A plea is made to facilitate adoption, as this has conclusively been shown to be the most successful method of rearing most children in substitute care. Should adoption not be possible or desired, it is my strong belief that the State should not intervene in foster situations where psychological bonds have been established.

*Based on a seminar given*
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*Spring Saturday Seminars*
*19th September, 1981*

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